

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Petition for Rulemaking to Amend)	
47 C.F.R. §§ 76.64, 76.93 and 76.103)	
)	RM – 11203
Retransmission Consent,)	
Network Non-Duplication, and)	
Syndicated Exclusivity)	

COMMENTS OF BLOCK COMMUNICATIONS, INC.

Group Owner of

KTRT(FOX), WAND (ABC), WDRB(FOX), WFTE(UPN), and WLIO (NBC)

and operator of cable television systems serving Toledo and Sandusky, OH

Block Communications, Inc. (“BCI”) files these comments to express the company’s strong support for the Petition filed by the American Cable Association (“ACA”).¹ As a broadcaster and smaller cable company, we bring a unique perspective to this proceeding. From this viewpoint, we can unequivocally state the following:

Broadcasters’ current plans to charge smaller cable companies substantial retransmission consent fees while at the same time blocking access to lower cost alternatives will hurt consumers, competition, and localism. The Commission must adjust its regulations to avert these harms.

ACA’s Petition accurately describes the looming retransmission consent crisis for smaller cable companies and the consumers they serve. The Petition proposes limited, market-based, pro-consumer solutions. As a broadcaster and smaller cable company, we ask the Commission to adopt ACA’s proposals and adjust your regulations.

¹ ACA Petition for Rulemaking, MB Docket No. RM-11203 (filed March 3, 2005) (“ACA Petition”)

I. Background - Block Communications, Inc. and our perspective on retransmission consent.

BCI is a privately-held, family-owned media and communications company. Our operations include television broadcasting, newspaper publishing, cable television, high-speed internet access, and telecommunications services. Our media and communications businesses include five smaller market television stations, two cable systems, two newspapers, and a telephone company. We are headquartered in Toledo, Ohio.

BCI is owned by the Block family, which has been in the media business for over 100 years. We have built our media business over the long haul. On the broadcast side, we acquired WLIO (NBC, Lima, Ohio) in 1972, WDRB (FOX, Louisville, Ky.) in 1984, KTRV (FOX, Boise, Id.) in 1985, two-thirds of WAND (ABC, Champaign, Springfield and Decatur, Il.) in 2000, and WFTE (UPN, Salem, In.) in 2001. We built our first cable system in 1965 in Toledo. We acquired the cable system serving Sandusky in 1981. Against the waves of consolidation in cable and broadcast, we have held on to our businesses.

As a small broadcaster and small cable company, we understand very well the importance of localism. On our broadcast stations, and on our cable systems, each week we provide hundreds of hours of local news, public affairs, and sports. We are especially proud of our local sports channel – Buckeye CableSystem Sports Network. All day, every day, this channel delivers local and regional high school, college, and professional sports to all our basic cable customers.

As a small broadcaster and small cable company, we also understand very well the dynamics of retransmission consent. In negotiating retransmission consent, on either side of the bargaining table, we work toward mutually beneficial carriage arrangements. Equally important, we work toward carriage arrangements that benefit the most important parties affected by these

negotiations – our viewing audience, our customers, and the greater communities that we serve.

To us, this means keeping the advertising market healthy to support our stations. This also means keeping our broadcast signals on local cable systems so customer viewing patterns are not disrupted. Finally, and most importantly, this means keeping down costs for consumers.

Each of these objectives aligns with important public interests that the Commission serves to protect. At the same time, each of these objectives is threatened by broadcasters' plans to charge smaller cable companies substantially higher retransmission consent fees. These plans will hurt consumers, competition and localism, and are especially dangerous for smaller cable companies as they strive to remain in business amid the climate of consolidation. This is why we strongly support ACA's Petition.

II. BCI supports ACA's Petition because broadcasters' plans to charge smaller cable companies substantially higher fees for retransmission consent fees will hurt consumers, competition, and localism.

We support ACA's Petition for three principal reasons:

- **The problem of retransmission consent “pricing” is very real.** ACA's Petition accurately describes the coming retransmission consent crisis. ACA estimates additional retransmission costs next round of \$860 million. Our analysis indicates this estimate is low. We anticipate the additional costs to smaller cable companies and consumers will exceed \$1 billion.
- **Substantial retransmission consent fees are not the right way to support local broadcasting.** In 2002, a Commission study found that ad-supported local broadcasting was “a survivor in a sea of competition.” Today, some broadcasters, especially smaller broadcasters like BCI, face a range of difficult business challenges. Still, it is bad business and bad policy to try and solve these problems by raising costs for cable consumers.
- **The limited solution proposed by ACA will work in the marketplace and will benefit consumers.** The solution proposed by ACA is straightforward – when a broadcaster wants a “price” for retransmission consent, let smaller cable companies “shop” for lower cost alternatives. This solution will bring marketplace discipline to retransmission consent pricing and avert sharp increases in basic cable rates loss of local signals, or both.

A. The problem of retransmission consent “pricing” is very real, and smaller cable companies are especially vulnerable.

ACA’s Petition accurately describes the looming retransmission consent crises for the smaller cable sector. The crisis arises from broadcasters’ new cash demands. ACA estimates that in the upcoming round retransmission consent will cost smaller cable companies at least \$864 million.² ACA bases this estimate on cable systems carrying each of the “Big Four” networks, and each of those stations charging an average of \$0.75 per subscriber per month.

Based on BCI’s experience as both a broadcaster and small cable company, we can validate ACA estimate of the costs of retransmission consent. At the same time, we think ACA’s estimate is conservative. We see ample evidence that the costs will be higher for at least two reasons.

First, the average cost of \$0.75 per major network may be low. Some smaller cable companies have already received demands for \$1 per subscriber per month. Similarly, at least one major network, Disney/ABC, says their stations are worth close to \$2 per month.³ Unchecked, nothing will prevent Disney/ABC from migrating its price to \$2, with other major networks to follow. For our cable business, this alone would add \$8 per month per subscriber to our basic tier, an annual cost increase of over \$14.8 million.

Second, ACA limits its estimate to stations affiliated with the “Big Four”. As a broadcaster, we can validate that many other stations, like those affiliated with the WB and UPN, will demand cash payments as well. To support these higher fees, the stations know they can use the same strategy described by ACA – using exclusivity regulations and restrictions in affiliate

² ACA Petition at 25.

³ ACA Petition at 32.

agreements to block access to other stations. Even if these stations requested a lower amount than Big Four stations, the aggregate costs of retransmission consent in the smaller cable sector will likely exceed \$1 billion.

The Commission has already analyzed the dynamics of this problem and the public interest harms that would result. In your *News Corp./DirecTV Order*, you analyzed retransmission consent dynamics as follows:

[T]he *ability* of a television broadcast station to threaten to withhold its signal, even if it does not actually do so, changes its bargaining position with respect to MVPDs, and could allow it to extract higher prices, which ultimately are passed on to consumers.⁴

* * *

[W]e agree with ACA to the extent that it argues that small and medium-sized MVPDs may be at particular risk of temporary foreclosure strategies aimed at securing supra-competitive programming rate increases for ‘must have’ programming. . . .⁵

The Commission has also made clear who really loses here – consumers. Either they pay more or lose desired programming.⁶

In short, the problem described by ACA is very real. Because of broadcasters’ escalating demands for substantial retransmission fees, the smaller cable sector, consumers, and the Commission face a looming crisis.

⁴ *In the Matter of General Motors Corporation and Hughes Electronic Corporation, Transferors and The News Corporation Limited, Transferee, For Authority to Transfer Control, Memorandum Opinion and Order*, 19 FCC Rcd. 473 (2004), ¶ 204.

⁵ *Id.*, ¶ 176.

⁶ *Id.*, ¶ 209 – 210 (citations omitted).

B. Substantial retransmission consent fees are not the right way to support local broadcasting.

As a broadcaster, we know the importance of exclusivity in maintaining our audience. Viewers lead to ratings, which lead to ad revenue. That is the model on which our broadcast business was built. That is also the model on which broadcast exclusivity developed.

As a broadcaster, we also understand that we could use exclusivity to charge substantial fees for retransmission consent, especially when dealing with smaller cable companies. Four of our five stations are affiliated with the Big Four networks. These stations carry “must have” programming for cable operators. Under current regulations, we could threaten temporary withdrawal unless our smaller cable company distributors paid us substantial fees. We could then use the exclusivity regulations and restrictions in affiliate agreements to prevent them from getting the programming elsewhere. We *could* do this, but we choose not to.

BCI does not charge substantial retransmission consent fees for three principal reasons: (i) it is bad for consumers; (ii) it is bad policy; and (iii) any problems with ad-supported broadcasting should not be solved by increasing costs for cable consumers.

Substantial retransmission consent fees are bad for consumers. Because we are also a cable operator, we are acutely aware that increased costs for programming result in higher cable rates for consumers. We know that in our broadcast markets, retransmission consent fees would end up on cable bills, and that hurts consumers. As the Commission has stated, BCI, and all broadcast licensees, owe a duty to “serve the ‘public interest, convenience, and necessity’ even if, in particular circumstances, that does not comport with [our] own immediate economic

interests.”⁷ It is self-evident that taking more money from cable customers does not fulfill that duty.

Using exclusivity to extract substantial retransmission consent fees is bad policy.

ACA’s Petition summarizes the consistent policy themes articulated by the Commission when promulgating exclusivity regulations.⁸ One of the most important themes is that broadcast exclusivity exists to protect broadcasters from “unfair competition from cable companies”.⁹ At the same time, the Commission has stated repeatedly that exclusivity should not “allow [a] network to increase its revenues.”¹⁰ As a broadcaster, we can fully validate ACA’s statement that no smaller cable company presents a competitive threat to our broadcast stations today. In short, they need our programming more than we need their subscribers. To use exclusivity regulations to further disadvantage smaller cable companies and extract higher fees squarely conflicts with the long-standing policy basis for those regulations.

Any problems with ad-supported broadcasting should not be solved by increasing costs for consumers. Finally, while the broadcast business may face a variety of challenges, the answer to those challenges is not to extract substantial payments from cable customers. As described in the Commission study cited by ACA, broadcasters are “survivors in a sea of

⁷ ACA Petition at 9-10, *citing, In the Matter of Cable Television Syndicated Program Exclusivity Rules; Inquiry into the Economic Relationship between Television Broadcasting and Cable Television*, Dockets No. 20988 and 21284, *Report and Order*, 79 FCC.2d 663 (1980), ¶ 6.

⁸ ACA Petition , p. 6-12.

⁹ *Id.* p. 7.

¹⁰ *Id.* p. 12.

competition” and the broadcast advertising market is generally sound.¹¹ At the same time, as a small group owner, we face a range of difficult business challenges – changes in affiliate compensation, the costs of the DTV transition, and the ever-increasing fractioning of the viewing public. While we could attempt to solve revenue concerns in the short term by using the leverage of exclusivity and control over “must have” programming to charge smaller cable companies substantial fees, this would hurt consumers and would conflict with our duties to advance the public interest. In short, these fees are bad business and bad policy.

Despite this, broadcasters, particularly the large, corporate-owned groups, are looking to charge smaller cable companies sharply higher fees in the upcoming round. In light of this fundamental change and to avert the harms that would result, changes must be made to the regulatory environment in which retransmission consent is “priced.” ACA’s Petition proposes limited, narrowly-tailored changes that will allow market forces to determine efficiently the price of retransmission consent. As discussed below, these changes will work well to address the problem, while preserving all necessary protections for broadcasters.

C. The limited solution proposed by ACA will work in the marketplace and will benefit consumers.

Finally, as both a broadcaster and smaller cable company, we have a balanced perspective on how ACA’s proposal will work in the marketplace. It is straightforward. In limited circumstances, ACA’s proposal will remove impediments that currently prevent a smaller cable company from negotiating carriage with an out of market broadcaster, but only in limited circumstances. Removing these impediments will create a genuine marketplace for retransmission consent, while maintaining exclusivity protection for broadcasters that need it.

¹¹ *Id.* p.18-21, citing Jonathan Levy et al., *Broadcast Television: Survivor In A Sea Of Competition* (Federal Communications Commission, Office of Plans and Policy, Working Paper Series No. 37, 2002).

This mechanism will lead to lower retransmission consent “prices”. Based on BCI’s 100 years of experience operating diverse media and communications properties, we can validate the following fundamental economic principal: When Supplier A of a good or service faces competition from Supplier B, Supplier A will respond by improving its product, lowering its price, or both. This works the same whether the supplier sells printing presses, telecommunications equipment, or set-top boxes. It will work the same way in retransmission consent.

As a broadcaster, we are not threatened by the prospect of this limited competition. We know that our in-market station is valuable to cable operators, and so long as we “price” retransmission consent appropriately, we will be carried and we can maintain exclusivity. We know the prospect of limited competition will moderate retransmission consent demands, which will lower costs for consumers and avoid the serious disruptions caused by the loss of network stations. The benefits to consumers are manifest.

III. Conclusion

As a broadcaster and smaller cable company, BCI understands very well the current dynamics of retransmission consent. From this perspective, we are acutely concerned about the escalating cash demands for retransmission consent and the use of exclusivity to block lower cost alternatives. As discussed above, especially where smaller cable companies are concerned, this dynamic will result in a crisis of sharply escalating basic cable rates and the loss of local signals. Consumers, competition, and localism will suffer.

ACA's Petition proposes a limited, narrowly tailored solution, and we ask the Commission to adopt it.

Respectfully submitted,

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BCI comments RM-11203